

## SENATE BILL NO. 29

INTRODUCED BY J. O'NEIL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A COURT TO CONSIDER MARITAL MISCONDUCT  
5 WHEN DIVIDING PROPERTY IN A PROCEEDING FOR DISSOLUTION OF MARRIAGE OR FOR LEGAL  
6 SEPARATION AND WHEN DETERMINING A PARENTING PLAN FOR A CHILD; AND AMENDING SECTIONS  
7 40-4-202 AND 40-4-212, MCA."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 **Section 1.** Section 40-4-202, MCA, is amended to read:

12 **"40-4-202. Division of property.** (1) (a) In a proceeding for dissolution of a marriage, legal separation,  
13 or division of property following a decree of dissolution of marriage or legal separation by a court ~~which~~ that  
14 lacked personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, ~~without~~  
15 ~~regard to marital misconduct,~~ shall, and in a proceeding for legal separation may, finally equitably apportion  
16 between the parties the property and assets belonging to either or both, however and whenever acquired and  
17 whether the title ~~thereto~~ to the property and assets is in the name of the husband or wife, or both. In making  
18 apportionment, the court shall consider:

19 (i) the duration of the marriage and prior marriage of either party;

20 (ii) the age, health, station, occupation, amount and sources of income, vocational skills, employability,  
21 estate, liabilities, and needs of each of the parties;

22 (iii) custodial provisions;

23 (iv) whether the apportionment is in lieu of or in addition to maintenance; and

24 (v) the opportunity of each for future acquisition of capital assets and income.

25 (b) The court shall also consider the contribution or dissipation of value of the respective estates and  
26 the contribution of a spouse as a homemaker or to the family unit.

27 (c) In dividing property acquired prior to the marriage; property acquired by gift, bequest, devise, or  
28 descent; property acquired in exchange for property acquired before the marriage or in exchange for property  
29 acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and  
30 property acquired by a spouse after a decree of legal separation, the court shall consider those contributions

1 of the other spouse to the marriage, including:

2 ~~(a)~~(i) the nonmonetary contribution of a homemaker;

3 ~~(b)~~(ii) the extent to which ~~such~~ the contributions have facilitated the maintenance of ~~this~~ the property;

4 and

5 ~~(c)~~(iii) whether or not the property division serves as an alternative to maintenance arrangements.

6 (2) In a proceeding, the court may protect and promote the best interests of the children by setting aside  
7 a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support,  
8 maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

9 (3) Each spouse is considered to have a common ownership in marital property that vests immediately  
10 preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested interest must  
11 be determined and made final by the court pursuant to this section.

12 (4) The division and apportionment of marital property caused by or incident to a decree of dissolution,  
13 a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or disposition of or  
14 dealing in property but is a division of the common ownership of the parties for purposes of:

15 (a) the property laws of this state;

16 (b) the income tax laws of this state; and

17 (c) the federal income tax laws.

18 (5) Premarital agreements must be enforced as provided in Title 40, chapter 2, part 6."

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20 **Section 2.** Section 40-4-212, MCA, is amended to read:

21 **"40-4-212. Best interest of child.** (1) The court shall determine the parenting plan in accordance with  
22 the best interest of the child. The court shall consider all relevant parenting factors, which may include but are  
23 not limited to:

24 (a) the wishes of the child's parent or parents;

25 (b) the wishes of the child;

26 (c) the interaction and interrelationship of the child with the child's parent or parents and siblings and  
27 with any other person who significantly affects the child's best interest;

28 (d) the child's adjustment to home, school, and community;

29 (e) the mental and physical health of all individuals involved;

30 (f) physical abuse or threat of physical abuse by one parent against the other parent or the child;

- 1 (g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;
- 2 (h) continuity and stability of care;
- 3 (i) developmental needs of the child;
- 4 (j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which  
5 is considered to be not in the child's best interests;
- 6 (k) whether a parent has knowingly failed to financially support a child that the parent is able to support,  
7 which is considered to be not in the child's best interests;
- 8 (l) whether the child has frequent and continuing contact with both parents, which is considered to be  
9 in the child's best interests unless the court determines, after a hearing, that contact with a parent would be  
10 detrimental to the child's best interests. In making that determination, the court shall consider evidence of  
11 physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not  
12 limited to whether a parent or other person residing in that parent's household has been convicted of any of the  
13 crimes enumerated in 40-4-219(8)(b).
- 14 (m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment  
15 actions; and
- 16 (n) whether a parent engaged in marital misconduct and whether the misconduct contributed to a  
17 breakup of the child's home, which is considered to be not in the child's best interests.
- 18 (2) A de facto parenting arrangement, in the absence of a prior parenting decree, does not require the  
19 child's parent or parents to prove the factors set forth in 40-4-219.
- 20 (3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:
- 21 (a) A parenting plan action brought by a parent within 6 months after a child support action against that  
22 parent is vexatious.
- 23 (b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to  
24 amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting  
25 plan or with dispute resolution provisions of the final parenting plan."

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